IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN HOMA, : CIVIL NO. 3:09-CV-1965

Plaintiff

v. (Judge Rambo)

: (Magistrate Judge Prince)

ENT SURGICAL ASSOCIATES;
THOMAS POLLOCK, D.O.;
DARREN J. HOHN, D.O.; and
HAZELTON HEALTH &
WELLNESS CENTER,

Defendants

MEMORANDUM

Before the court is a report of the magistrate judge to whom this matter was referred. The magistrate judge recommends that the motion to dismiss filed by defendants ENT, Pollock and Hohn be granted. Defendants' motion is based on Federal Rule of Civil Procedure 12(b)(5) and is predicated on the fact that Plaintiff's complaint was not served in compliance with Federal Rule of Civil Procedure 4(m).

Plaintiff filed objections to the report and recommendation in which he set forth reasons for not meeting the 120 day service requirement.¹ Moving defendants have filed a response to the objections and the matter is ripe for disposition.

In his objections, Plaintiff's counsel sets forth reasons why he did not serve the complaint timely. He alludes to social commitments, family financial concerns, the drive to serve the defendants was a long drive requiring time he did not have, etc. He does not state why he did not use a process server.

¹The court notes that, according to the docket, Plaintiff has not filed a return of service in this case.

Under Federal Rule of Civil Procedure 4(m), the court may extend the time for service upon a showing of good cause. When, however, failure to meet the deadline is due to an attorney's lack of diligence, the failure to serve will not be excused. *Momah v. Albert Einstein Medical Center*, 158 F.R.D. 66, 69 (E.D. Pa. 1994).

Personal circumstances which made it inconvenient to effect service is not "good cause." The report and recommendation will be adopted. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: June 24, 2010.

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Defendants

ORDER

In accordance with the accompanying memorandum, and upon consideration of the record before the court, **IT IS HEREBY ORDERED THAT:**

- 1) The court adopts the report and recommendation of Magistrate Judge Prince.
- 2) The motions to dismiss filed by defendants ENT Surgical Associates, Thomas Pollock, D.O., and Darren J. Hohn, D.O. (docs. 3, 4, & 5), are **GRANTED** and this action is dismissed without prejudice as to those defendants.
- 3) No later than July 12, 2010, Plaintiff shall advise the court as to the status of the case as to Hazelton Health and Wellness Center.
 - 4) This matter is remanded to Magistrate Judge Prince.

s/Sylvia H. Rambo
United States District Judge

Dated: June 24, 2010.